SUPREME COURT, U. S.
APPENDIX

JAN 3 1972
E. ROBERT SEAVER, CLERK

Supreme Court of the United States

TERM, 1971

No. 71-5078

DEAN RENE PETERS,
Petitioner,

—v.—

C. P. KIFF, WARDEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 12, 1971
CERTIORARI GRANTED NOVEMBER 22, 1971

Supreme Court of the United States

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No. 71-5078

DEAN RENE PETERS,

Petitioner,

—v.—

C. P. KIFF, WARDEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

Civil Action No. 709

[Filed at 12:30 P.M., Mar. 16, 1970 /s/ [Illegible],
Deputy Clerk, U. S. District Court,
Middle District of Georgia]

DEAN RENE PETERS, PETITIONER

vs.

C. P. KIFF, Warden, Macon Prison Branch,
Macon County, Georgia, RESPONDENT

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, FOR THE MIDDLE DISTRICT OF GEORGIA, AMERICUS DIVISION:

1.

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 2241 (c) (3), and the petitioner seeks, by this action to obtain post-conviction review of his conviction for the offense of burglary, and sentence of ten (10) years rendered against him on December 8, 1966, in Muscogee County Superior Court, Muscogee County, Georgia.

2.

The petitioner has not exhausted his so-called state remedies, on the constitutional issues raised and objected in this petition, due to the fact that there exist circumstances rendering such process ineffective to protect the constitutional rights of the petitioner.

The precise constitutional issues that the petitioner is now raising have been presented to, and rejected by, the Supreme Court of Georgia.

There is no utility in requiring the petitioner to exhaust his so-called state remedies since it is evident that

the state courts of Georgia will not consider or grant relief to the petitioner, therefore he has no substantial hope of relief in the state courts of Georgia. Thus, it would be futile to require petitioner to attempt to exhaust his so-called state remedies in the state courts of Georgia.

3.

The petitioner is 37 years of age, and a citizen of the United States of America, and residing in Macon County, Georgia.

4.

The petitioner is being unconstitutionally and illegally restrained of his liberty by being confined in the Macon Prison Branch, Macon County, Georgia. The person illegally restraining petitioner of his liberty is the Hon. C. P. Kiff, Warden, Macon Prison Branch, Macon County, Georgia. The cause or pretense for said restraint of petitioner's liberty is by virtue of and under a sentence issued and signed by Hon. John H. Land, Judge, Muscogee Superior Court, Chattahoochee Judicial Circuit, dated December 8, 1966. The sentence and order of the court was ten (10) years in confinement for the offense of burglary. A copy of said sentence and order is attached hereto, and marked as "Exhibit A" in this petition.

The petitioner is serving also, another burglary sentence of ten (10) years *consecutively* to his present sentence of ten (10) years. (emphasis supplied) The petitioner is challenging only the first conviction, sentence and judgment thereupon for the offense of burglary, and this is the sentence that the petitioner is presently serving.

5.

The petitioner has not knowingly, intentionally, intelligently or voluntarily waived, abandoned or relinquished any of his rights or privileges granted or secured unto him by the Constitution of the United States of America. Petitioner shows unto the court that his attorney for the conviction which is being challenged in this petition was disbared as an attorney in the State of Georgia, subsequent to petitioner's trial and conviction. In addition, any

choice or decision made by petitioner's attorney was made without prior consultation with petitioner, nor did petitioner participate in any decisions relating to pre-arraignment or pre-trial proceedings, or during the trial in chief.

6.

The petitioner was indicted by a Muscogee County grand jury on June 6, 1966, indictment #24927, and petitioner's original conviction upon this indictment was shortly thereafter. Petitioner appealed his original conviction on the burglary charge to the Court of Appeals of Georgia, and his original burglary conviction was reversed and remanded for re-trial. (Peters v. State, 114 Ga. App. 595) Upon re-trial, petitioner was convicted on December 8, 1966, with a sentence of ten (10) years. This conviction was appealed to the Court of Appeals of Georgia, and the conviction was affirmed. (Peters v. State, 115 Ga. App. 743) A motion for rehearing was denied by the Court of Appeals of Georgia.

On June 12, 1967, petitioner filed a petition for writ of habeas corpus, and an evidentiary hearing pursuant thereto, in the United States District Court for the Middle District of Georgia, Columbus Division. On July 5, 1967, petitioner was denied an evidentiary hearing upon his petition by the United States District Court for the Middle District of Georgia, Columbus Division, and his conviction was affirmed by that court.

Subsequent to the denial of the writ of habeas corpus and the evidentiary hearing pursuant thereto, petitioner appealed to the United States Circuit Court of Appeals for the Fifth Circuit. The United States Circuit Court of Appeals for the Fifth Circuit affirmed petitioner's conviction on the *exclusive and limited* grounds that the petitioner had not exhausted his so-called state remedies in light of the newly and subsequently enacted Habeas Corpus Act of 1967, by the General Assembly of Georgia. (emphasis supplied)

7.

The petitioner has been denied "equal protection of law" and "due process of law" under the Fourteenth Amendment to the Constitution of the United States of

America, in that the grand jury which indicted him, and the traverse/petit jury which tried, convicted and sentenced him to ten (10) years were unconstitutionally and illegally composed and drawn from respective jury boxes in that:

(a) The laws of Georgia, in effect at the time of petitioner's indictment by a Muscogee County grand jury on June 6, 1966, which controlled and governed the selection of grand jurors names to be placed in the grand jury box by the jury commissioners, and the ensuing venires, drawn by the Superior Court judge from the grand jury box, one of such venires which resulted in the grand jury that indicted petitioner, were unconstitutional in their application in that they: (1) systematically excluded Negroes from grand jury service; and, (2) absolutely, intentionally and totally excluded from grand jury service all non-property owners, or the lower socio-economic non-property owning class, of which petitioner is a member.

(b) The laws of Georgia, in effect at the time of petitioner's trial by jury on December 8, 1966, and his subsequent conviction and sentence pursuant thereto, and judgment thereupon, which controlled and governed the selection of traverse/petit jurors names to be placed in the Muscogee County, Georgia, traverse/petit jury box by the jury commissioners, and the ensuing venires, drawn by the Superior Court judge from the traverse/petit jury box, one of such venires which resulted in the traverse/petit jury which tried, convicted and set the ten (10) years sentence of petitioner, were unconstitutional in their application in that they: (1) systematically excluded Negroes from traverse/petit jury service; and, (2) absolutely, intentionally and totally excluded from traverse/petit jury service all non-property owners, or the lower socio-economic non-property owning class, of which the petitioner is a member.

8.

The jury commissioners of Muscogee County, Georgia, prior to and at the time of petitioner's indictment, were directed by Title 59, Georgia Code Annotated, Section 106,

to select the names of persons eligible for grand and traverse/petit jury service from the county tax digests which were maintained and organized on the basis of race or color pursuant to Title 92, Georgia Code Annotated, Section 6307.

The jury commissioners of Muscogee County, Georgia, prior to and at the time of petitioner's trial by jury, did in fact select the names of persons, from which the grand and traverse/petit jurors were drawn, that indicted, tried, convicted and set sentence upon the petitioner, from the tax digests which were in fact organized and maintained on the basis of race or color.

For these reasons contained within this paragraph, the petitioner has been denied "equal protection of the law" and "due process of the law" as is guaranteed unto him by the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, petitioner prays unto the Court as follows:

(a) That the writ of habeas corpus issue immediately to the Respondent, and that the Petitioner be brought immediately before the court;
(b) That the court inquire into the illegality of the petitioner's conviction, sentence and detention, and that the petitioner's Federal Constitutional claims be sustained;
(c) That the court set a time, date and place certain in order that the Respondent may show cause, if any, as to why the petitioner should not be released from Respondent's custody; and,
(d) That the Court grant petitioner any further relief that the court deems to be in the interest of justice in this cause.

This 16th day of March, 1970.

/s/ Edward T. M. Garland
EDWARD T. M. GARLAND
Attorney for the Petitioner

229 Candler Building
Atlanta, Georgia

GEORGIA, MACON COUNTY.

Personally appeared before me, the undersigned officer, duly authorized to administer oaths for and in said State and County, Dean Rene Peters, on behalf of himself, who after being first duly sworn, on oath deposes and says that he is the petitioner in this petition for writ of habeas corpus and that the allegations contained in the foregoing petition are true and correct.

/s/ Dean Rene Peters
DEAN RENE PETERS

Sworn to and subscribed to before me, this 5th day of March, 1970.

/s/ [Illegible]
Notary Public
Macon County, Georgia

[NOTARY'S SEAL]

My commission expires:
16th day of March, 1974

EXHIBIT "A"

GEORGIA, MUSCOGEE COUNTY
IN MUSCOGEE SUPERIOR COURT
December Term, 1966

BURGLARY

No. 24927 and Verdict of Guilty

THE STATE

vs.

DEAN RENE PETERS

WHEREUPON, it is ordered and adjudged by the Court that the Defendant DEAN RENE PETERS be taken from the bar of this Court to the jail of Muscogee County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or such place as the Director of Corrections may direct, where he, the said defendant be confined at labor for the full term of not less than ten years, to be computed according to law.

This the 8th day of December, 1966.

/s/ John H. Land
Judge Superior Court

EXHIBIT "A"

STATE OF GEORGIA
COUNTY OF MUSCOGEE

IN THE SUPERIOR COURT OF SAID COUNTY, JUNE TERM 1966 THE GRAND JURORS selected, chosen and sworn for the county of Muscogee to wit:

I Mose C. Cooper, Foreman

2. James Pearce Power
3. Norvell R. Boyd, Jr.
4. Robert J. Flournoy, Jr.
5. Sal V. Aglialoro
6. Glenn K. Albright, Sr.
7. Ronald L. Green
8. Cecil L. Andrews
9. Julian P. Goolsby
10. Irvin Rosenburg
11. John R. Bannister
12. Geo. W. Mendenhall
13. William C. Pease III
14. Fred D. Faulkenberry
15. W. Demar McEathern
16. Richard W. Summerlin
17. Hadley Murrah
18. Eugene C. Alford
19. Charles C. Bagwell, Sr.
20. A. Curtis Walker
21. Richard H. Bickerstaff, Sr.
22. James C. Metcalf
23. Gerald B. Saunders

in the name and behalf of the citizens of Georgia, charge and accuse Dean Rene Peters with the offense of:— Burglary for that said accused, in the county of Muscogee and State of Georgia, did on the 6th day of March, 1966 with force of arms, did unlawfully break and enter the storehouse and place of business of H. Rothschild, Inc., a corporation, the same being a place where valuable goods were contained, with intent then and there to commit a larceny, contrary to the laws of said State, the good order, peace and dignity thereof.

W. B. SKIPWORTH, JR.
Solicitor General

Special Presentment

The Defendant _____ Waives Copy of Bill of indictment, and list of witnesses sworn before the Grand Jury, and having been arraigned pleads not guilty.

_____
Solicitor General

_____
Deft's. Attorney

The Defendant Dean Rene Peters Waives Copy of Bill of indictment, and list of witnesses sworn before the Grand Jury, and arraignment, and pleads not guilty.

/s/ Frank K. Martin
Solicitor General

/s/ [Illegible]
Deft's. Attorney

(Min. 10, Folio 20)

24927

(Min. 9, Folio 506)

Sol's No. ____ Clerk's No. ____

MUSCOGEE SUPERIOR COURT

THE STATE

vs.

DEAN RENE PETERS

Burglary

W. B. SKIPWORTH, JR.
Solicitor General

TRUE BILL

/s/ M. C. Cooper
Foreman

Jun. 6, 1966

Special Presentment

WITNESSES:

_____

_____

_____

_____

_____

_____

We the jury Find the Defendant Guilty as Charged and fix the punishment at 10 years.

This the 8th day of December, in the year 1966.

/s/ [Illegible]
Foreman

(Min. 10, Folio 98)

[Certificate of Service (Omitted in Printing)]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

Civil Action No. 709

[Filed at 8:30 A.M., Apr. 8, 1970 /s/ Pearl Wilkes, Deputy Clerk, U. S. District Court]

DEAN RENE PETERS, PETITIONER

v.

C. P. KIFF, Warden, Macon Prison Branch, Macon County, Georgia, RESPONDENT

MOTION TO DISMISS

Now comes C. P. Kiff, the respondent in the above-styled case, and before pleading to the merits of the petitioner's application for writ of habeas corpus; files this his motion to dismiss pursuant to rule 7B.

The respondent moves the Court to dismiss said application because:

1.

The merits of substantially the same issues were determined adversely to petitioner by virtue of order and judgment of the Honorable J. Robert Elliott, Judge of the United States District Court for the Middle District of Georgia, Columbus Division, entered in civil action number 1233 on July 5, 1967 and affirmed by United States Court of Appeals, Fifth Circuit, on June 6, 1968;

2.

Petitioner failed properly to exhaust his available State remedies;

3.

Petitioner failed to set forth a cause of action upon which relief can be granted.

/s/ Arthur K. Bolton
ARTHUR K. BOLTON
Attorney General

/s/ Harold N. Hill, Jr.
HAROLD N. HILL, JR.
Executive Assistant
Attorney General

/s/ Marion O. Gordon
MARION O. GORDON
Assistant Attorney General

/s/ Wade V. Mallard, Jr.
WADE V. MALLARD, JR.
Attorney

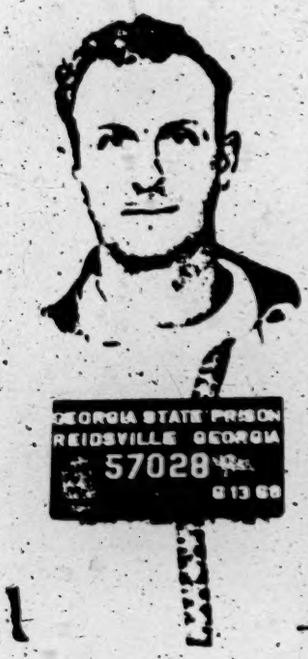
Please serve:

WADE V. MALLARD, JR.
P. O. Address:

132 Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

[Certificate of Service (Omitted in Printing)]

STATE OF GEORGIA
DEPARTMENT OF PUBLIC SAFETY
GEORGIA BUREAU OF INVESTIGATION
IDENTIFICATION UNIT
P. O. BOX 1456, ATLANTA, GEORGIA



...evill..., ...orgia
Received 6-13-67
From ...ecatur Co. Ga.
Crime ...urglary
Sentence 10 yrs. ____ mos. ____ days
Date of sentence 6-1-67
Sentence begins ____
Sentence expires ____
Good time sentence expires ____
Residence ____
Birthplace Cair..., Ala.
Nationality Amer
Age 33 34
Date of birth 9-?-33
Height 5-11
Complexion ...ddy
Hair Brn
Weight 175
Eyes Blue
Build ...ediu
Occupation ...lub ...anager

Scars and marks None visible

Notify in case of sudden illness Mrs. Virginia ...ers-417 ...e ...andy ...., ...dison, ...orgia
Same as above

Nearest relatives ____

Accomplices ____

(Please furnish all additional criminal history and police record on separate sheet)

"A."

EXHIBIT A

DESCRIPTIVE REPORT

RS

DC No. 1
PP-155

DESCRIPTION OF PRISONER WHEN RECEIVED

State Board of Corrections

Atlanta, Georgia

Gentlemen:

The prisoner named below was this day received from Ga. State Prison Reidsville, Ga.

Name RETT PETERS, Dean R. Alias _____

State Serial No. A-67848 Case No. _____

County in which convicted Muscogee County Crime Burglary

Sentence 10 Years Date Sentenced 6-1-67

Race White Age 34 Height 5-11 Weight 175 Build Med.

Color of Hair Brown Color of Eyes Blue Complexion ruddy Sex male

Scars None Visible

Occupation Club Manager Employed by _____

Father Roy E. Peters Mother Mother: Sara Cludia Peters

Marital Status Mrs Virginia Peters Children 5

In case of emergency notify Wife: Mrs virginia Peters 217 E. Peabody Apt. Columbus,

Date and Place of Birth Ozark, Ala. 9-9-33

Education 8 th Grade Member of Church Baptist

Last Address W/ Wife Previous Service Yes See FBI Report

In my opinion this subject is able to perform

Ordinary work in this camp ( ).
Light manual labor ( ).
Unable to perform any manual labor ( ).

C. P. Kiff,
(Name of Warden)

MACON PRISON BRANCH
MONTEZUMA, GEORGIA
County Public Works Camp

01-29-70
(Date)

"B"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

Civil Action No. 709

[Filed at 8:30 A.M., Apr. 23, 1970, /s/ Pearl Wilkes
Deputy Clerk, U. S. District Court]

DEAN RENE PETERS, PETITIONER

v.

C. P. KIFF, Warden, Macon Prison Branch,
Macon County, Georgia, RESPONDENT

ORDER ON RESPONDENT'S MOTION TO DISMISS

The Respondent in the above styled case has filed a motion to dismiss this petition for the writ of habeas corpus and has supported the same by brief.

A review of the file in this matter shows:

(1) That the merits of substantially the same issues here raised were determined adversely to Petitioner by virtue of the order and judgment of this Court entered in Civil Action No. 1233, in the Columbus Division, on July 5, 1967, and affirmed by the United States Court of Appeals for the Fifth Circuit on June 6, 1968. *Peters* v. *Rutledge*, 397 F.2d 731.

(2) That the Petitioner has failed to exhaust his available state remedies.

(3) That the petition fails to set forth a cause of action upon which relief can be granted.

For these reasons the Respondent's motion to dismiss is sustained and the petition is ordered dismissed.

This 22nd day of April, 1970.

/s/ J. Robert Elliott
United States District Judge

I hereby certify that I have this date mailed a copy of the within to Mr. Edward T. M. Garland, 229 Candler Building, Atlanta, Georgia 30303, and Mr. Wade V. Mallard, Jr., Assistant Attorney General, 132 Judicial Building, 40 Capitol Square, Atlanta, Georgia 30334.

This April 23, 1970.

/s/ Pearl C. Wilkes
PEARL C. WILKES
Deputy Clerk

Form No. 12: Notice of Appeal

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
AMERICUS DIVISION

Civil Action No. 709

[Filed at 4:15 P.M., May 18, 1970, /s/ [Illegible],
Deputy Clerk, U. S. District Court,
Middle District of Georgia]

DEAN RENE PETERS, PETITIONER

v.

C. P. KIFF, Warden, RESPONDENT

TO: Hon. Arthur K. Bolton, Attorney General, State of Georgia
Hon. W. B. Skipworth, Jr., District Attorney, C.J.C.
Hon. C. P. Kiff, Warden, Macon Prison Branch
Attorneys for Respondent

NOTICE OF APPEAL

Notice is hereby given that Dean Rene Peters, petitioner in the above-styled case, hereby appeals to the United States Court of Appeals for the Fifth Circuit from an order of the United States District Court for the Middle District of Georgia entered on the 22 day of April, 1970, refusing the relief requested by his Petition for a Writ of Habeas Corpus and for a stay of execution.

/s/ Edward T. M. Garland
EDWARD T. M. GARLAND
Attorney for Petitioner

Suite 229
Candler Building
Atlanta, Georgia 30303

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

709

DEAN RENE PETERS

vs.

C. P. KIFF, Warden, Macon Prison Branch, Macon County, Georgia

For plaintiff:

Edward T. M. Garland
229 Candler Building
Atlanta, Ga. 30303

For defendant:

Wade V. Mallard, Jr.
Assist. Attorney General
132 Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

PETITION FOR WRIT OF HABEAS CORPUS

DATE 1970	PROCEEDINGS	Page No.
3-16	Filed Petition for Writ of Habeas Corpus, issued summons and delivered to U. S. Marshal.	2-12
3-16	J. S. 5 Report prepared.	
3-30	Filed U. S. Marshal's Return showing that Mr. Arthur K. Bolton was served personally at State Capital, Atlanta, Ga. on March 23, 1970.	13-14

DATE 1970	PROCEEDINGS	Page No.
3-30	Filed U. S. Marshal's Return showing that C. P. Kiff, Warden, Macon Prison Branch, Macon County, Ga., was served personally at Macon Prison Branch on March 27, 1970.	15
4- 8	Filed Motion to Dismiss and Notice of Motion.	17-22
4- 8	Filed U. S. Marshal's Return showing that Mr. W. B. Skipworth, Sol. Gen., Columbus, Ga., was served on March 24, 1970 at Columbus, Ga.	16
4-23	Filed Order of Judge J. Robert Elliott on Respondent's Motion to Dismiss sustaining motion to dismiss and dismissing petition.	23-24
4-23	J. S. 6 Report prepared.	
5-18	Filed Notice of Appeal and Certificate of Service.	25-28

No. 30081

DEAN RENE PETERS

versus

C. P. KIFF, Warden, Macon Prison Branch, Macon County, Ga.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
January 18, 1971

On this day this cause was called, and after argument by Edward T. M. Garland, Esq., for appellant, and Dorothy T. Beasley, Asst. Atty. General, for appellee, was submitted to the Court.

* * * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30081

DEAN RENE PETERS, PETITIONER-APPELLANT

versus

C. P. KIFF, Warden, Macon Prison Branch, Macon County, Ga., RESPONDENT-APPELLEE

Appeal from the United States District Court for the Middle District of Georgia

(March 11, 1971)

Before RIVES, GOLDBERG and MORGAN, Circuit Judges

MORGAN, Circuit Judge: In this appeal a Georgia state prisoner attacks the denial of his petition for the writ of habeas corpus by the district court. We affirm.

Dean Rene Peters, a white man, asks that his conviction for burglary be set aside because Negroes were systematically excluded from the grand and petit juries which indicted and convicted him. See *Whitus* v. *Georgia*, 1967, 385 U.S. 545. Peters was convicted on December 8, 1966, and sentenced to a prison term of 10 years. On appeal the Georgia Court of Appeals affirmed the conviction. *Peters* v. *State*, 1967, 115 Ga. App. 743. Peters then sought a writ of habeas corpus in federal district court, claiming for the first time that his constitutional rights were violated by the exclusion of Negroes from jury duty. The district court denied relief and we affirmed its decision in *Peters* v. *Rutledge*, 5 Cir., 1968, 397 F. 2d 731, on the ground that Peters failed to exhaust his available state remedies by presenting the question of jury discrimination to the state courts under the

newly enacted Georgia Habeas Corpus Act of 1967 (Ga. L. 1967, pp. 835-839). Instead of returning to the Georgia courts for an adjudication of his contention, Peters re-filed a petition for habeas corpus in federal district court and from its refusal to grant the desired relief the instant appeal was taken.

Appellant Peters is quite correct in concluding that he no longer has any available state remedies which can be exhausted. 28 U.S.C. § 2254. Subsequent to our decision in *Peters* v. *Rutledge*, supra, the Georgia Supreme Court has unequivocally held that judicial review of jury discrimination is foreclosed when the accused offered no objection to the composition of the venire during the trial and the conviction occurred prior to the decision in *Whitus* v. *Georgia*, supra. *Davis* v. *Smith*, 5 Cir., 1970, 430 F. 2d 1256; *Strauss* v. *Grimes*, 1967, 223 Ga. 834, 158 S.E. 2d 404, cert. den. 391 U.S. 903; *Gresham* v. *Smith*, 1970, 226 Ga. 290; *Brawner* v. *Smith*, 1969, 225 Ga. 296. The presence of both these factors in the case at hand obviates the requirement of exhaustion of state remedies.

Turning to the merits of appellant's contention, we note that the identical issue was before this court in a proposed rehearing en banc in the case of *Salisbury* v. *Grimes*, 5 Cir., 1969, 406 F. 2d 50. Since the en banc court in the *Salisbury* case was dissolved, the law of this circuit stands as stated in *Mosley* v. *Smith*, 5 Cir., 1968, 404 F. 2d 346, where we held that a white man is not denied equal protection because he was indicted and convicted by juries from which Negroes were excluded. *Fleming* v. *Kelly*, 5 Cir., 1971, —— F. 2d —— [No. 26,872, February 9, 1971]. The denial of the petition by the district court is therefore

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1970

No. 30081

D. C. Docket No. CA 709

DEAN RENE PETERS, PETITIONER-APPELLANT

versus

C. P. KIFF, Warden, Macon Prison Branch, Macon County, Ga., RESPONDENT-APPELLEE

Appeal from the United States District Court for the Middle District of Georgia

Before RIVES, GOLDBERG and MORGAN, Circuit Judges

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that petitioner-appellant pay to respondent-appellee, the costs on appeal to be taxed by the Clerk of this Court.

March 11, 1971

Issued As Mandate: Apr. 21, 1971

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30081

DEAN RENE PETERS, PETITIONER-APPELLANT

versus

C. P. KIFF, Warden, Macon Prison Branch, Macon County, Ga., RESPONDENT-APPELLEE

Appeal from the United States District Court for the Middle District of Georgia

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion Mar. 11, 1971, 5 Cir., 1971, —— F. 2d ——)

(April 13, 1971)

Before RIVES, GOLDBERG and MORGAN, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

SUPREME COURT OF THE UNITED STATES

No. 71-5078

[Filed, U. S. Court of Appeals, Dec. 6, 1971,
Edward W. Wadsworth, Clerk]

DEAN RENE PETERS, PETITIONER

v.

C. P. KIFF, Warden

ORDER ALLOWING CERTIORARI—Filed November 22, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 453055 396